

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CASE NO. 5:09-CV-29-RLV-DCK**

MATT JENKINS,)	
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
ENCORE RECEIVABLE)	
MANAGEMENT, INC.,)	
)	
Defendant.)	
_____)	

THIS MATTER IS BEFORE THE COURT on “Defendant Encore’s Motion To Compel Discovery And Supporting Brief” (Document No. 19) and “Plaintiff’s Motion For Leave To File Responsive Brief...” (Document No. 25). These motions have been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b), and immediate disposition is appropriate. Having carefully considered the arguments, the record, and the applicable authority, the undersigned will deny without prejudice the motion to compel and deny the motion to file a surreply.

Plaintiff filed an “Amended Complaint” (Document No. 10) alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et. seq.* (“TCPA”); the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et. seq.* (“FDCPA”); and the North Carolina Collection Agencies Act, N.C.Gen.Stat. § 58-70 *et. seq.* (“NCCAA”). Plaintiff contends that Defendant used an automatic telephone dialing system or an artificial or prerecorded voice in making multiple calls to his cellular phone, without his express consent, between March 1, 2008 and July 31, 2008. Plaintiff further contends that Defendant left messages which failed to disclose that the communication was from a debt collector and/or the true name or identity of the caller, and that some of these calls were between the hours of 9:00 p.m. and 8:00 a.m.

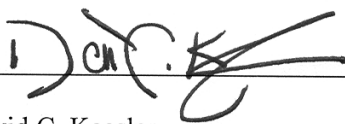
On or about August 7, 2009, Defendant served various discovery requests upon Plaintiff who responded to those requests on or about September 4, 2009. Subsequently, counsel for the parties have communicated with each other regarding the sufficiency of Plaintiff's response to some of those requests. Plaintiff has twice amended and/or supplemented his responses. Pursuant to Fed. R.Civ.P. § 37(a), Defendant filed its motion to compel alleging that Plaintiff's responses to Interrogatory Numbers 12, 13, 21, 22, 24, and 25, as well as Request for Production of Documents Numbers 14, 15, 17, 18 and 20, remain insufficient.

After careful review of the parties' briefs regarding these issues, and noting that Court staff recently received notice that some, or even all, of the discovery issues related to these motions may have been resolved, the undersigned commends the parties' efforts to cooperate in the discovery process. In view of the passage of time since these motions were filed, and the likelihood that the parties have made at least some progress in resolving the disputed discovery requests, the undersigned will deny the pending motions. However, should counsel for the Defendant determine that the discovery produced remains insufficient, this Order is filed without prejudice to Defendant to file an updated motion to compel.

IT IS, THEREFORE, ORDERED that "Defendant Encore's Motion To Compel Discovery And Supporting Brief" (Document No. 19) is **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that "Plaintiff's Motion For Leave To File Responsive Brief..." (Document No. 25) is **DENIED**.

Signed: March 11, 2010



David C. Keesler
United States Magistrate Judge

